

Preventing Civic Space Restrictions: an Exploratory Study of Successful Resistance Against NGO Laws

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PRIF REPORT

PEACE RESEARCH INSTITUTE FRANKFURT / LEIBNIZ-INSTITUT HESSISCHE STIFTUNG FRIEDENS- UND KONFLIKTFORSCHUNG

JANA BALDUS, NORA BERGER-KERN,
FABIAN HETZ, ANNIKA ELENA POPPE
AND JONAS WOLFF //

**PREVENTING CIVIC SPACE
RESTRICTIONS. AN EXPLORATORY
STUDY OF SUCCESSFUL RESISTANCE
AGAINST NGO LAWS**



PRIF Report 1/2019

PREVENTING CIVIC SPACE RESTRICTIONS

AN EXPLORATORY STUDY OF SUCCESSFUL
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Since the turn of the century, civil society organizations (CSOs) in many countries around the world have been confronted with increasing restrictions, if not outright repression. In recent years, civil society activists, politicians and researchers have started to discuss how local CSOs, foreign governments, international organizations, and transnational civil society networks can, do and should respond to this phenomenon of shrinking civic spaces. This report contributes to this debate by studying strategies aimed at preventing the shrinking of civic space. It does so by looking at four successful cases of resistance against so-called NGO laws: Azerbaijan (2009), Kenya (2013–2016), Kyrgyzstan (2013–2014), and Zambia (2009–2014). In these cases, attempts by governments to increase legal restrictions on CSOs were frustrated, aborted or, at least, significantly mitigated as a consequence of domestic resistance, supported (to varying degrees) by external actors. The report analyzes and compares these four cases in order to identify conditions and dynamics that contribute to understanding successful resistance.

In 2009, the Azerbaijani government proposed amendments to the national NGO Law, which would have imposed severe restrictions and obligations regarding the registration and operation of NGOs. Within a very short period of time, an ad hoc coalition of Azerbaijani NGOs and international state and non-state actors mobilized resistance that pressured the Azerbaijani government to significantly soften the draft amendments. Empirical evidence suggests that rapid coordination of a broad and diverse set of domestic and external, non-governmental and governmental actors that mobilized to jointly exert pressure from both the inside and the outside were the key to success.

In the fall of 2013, the Kenyan government introduced a draft law to the National Assembly that aimed at amending the 2013 Public Benefits Organizations Act. At the center of these amendments was a clause that would have limited the amount of foreign funding allowed for all NGOs operating in Kenya to a maximum of 15% of their total funding. While the international donor community remained relatively silent on the issue, a wide-ranging set of Kenyan NGOs joined together and ran a comprehensive advocacy campaign to prevent the adoption of the draft law. Highlighting the importance of the CSO sector for Kenya's economy, social services and development, the NGOs ultimately convinced the majority of the members of parliament to reject the amendments.

In 2013, the Kyrgyz Parliament considered a restrictive NGO law similar to the Russian Foreign Agents Law of 2012. Most notably, the law would have forced NGOs that receive foreign funding to mark all publications with a "foreign agent" label. After extensive lobbying by domestic and international CSOs as well as by foreign governments, the law was significantly softened and finally rejected by parliament. The successful campaign against the draft Foreign Agents Law was driven by a broad alliance of Kyrgyz NGOs, which was supported by several international actors through advocacy and by providing direct technical assistance to the campaign.

In 2009, the Zambian government passed a new law to regulate NGOs, which was widely criticized in the country as restricting civic space. In 2013, a newly elected government – which had previously criticized the NGO Act – implemented the law. In response, Zambian NGOs lobbied intensively to repeal the NGO Act and, after eight NGOs challenged the government in court over the controversial law, the government suspended the law in 2014. As a consequence, the government and NGO representatives

initiated a dialogue aimed at revising the NGO law – a dialogue supported and facilitated by the German Agency for International Cooperation (GIZ).

In all four cases, a strong domestic campaign was a crucial element of successful resistance to restrictive NGO laws. In the campaigns against NGO laws studied here, this domestic resistance did not take the form of mass protests, but instead was driven by organized civil society groups, coordinated and led by the NGOs that would potentially be affected. Still, broad and relatively united alliances of NGOs in all cases went beyond the specific subset of human rights and advocacy organizations and also included the usually far larger group of NGOs engaged in social service delivery as well as, in part, other non-governmental actors (such as trade unions, business associations and/or private media). In terms of strategy, these alliances combined a general advocacy and awareness-raising campaign with targeted lobbying efforts. The role of external actors was more limited and varied, even if some form of support provided to the domestic resistance from the outside was relevant in all four cases. In the African cases, observable international pressure was absent but external actors publicly supported the arguments put forward by the domestic campaign (Kenya) or helped to mediate between the NGOs and the government (Zambia). In the Central Asian cases, international criticism was more important and also included some pressure. Of particular relevance were regional organizations such as the Council of Europe (Azerbaijan) and the OSCE (Kyrgyzstan).

In terms of the counter-narratives put forward, the most successful arguments were those that were tied to tangible negative consequences of the (planned) legal restrictions. This is very clear in the case of Kenya, where emphasis was placed on potentially massive negative socioeconomic consequences; but similar claims were also important in Kyrgyzstan. In Azerbaijan, the negative consequences concerned the international impact (the country's integration with "the West"). In notable contrast to the global discourse on shrinking civic spaces, general references to universal human rights standards were mostly absent from the domestic campaigns studied here.

Finally, the case studies underline that successful resistance is also dependent on the political context in the countries involved. In none of the four cases did domestic resistance have to confront a closed autocratic regime but was able to make use of at least a certain degree of civic space and political access. This applies in particular to three of the four cases (Kenya, Kyrgyzstan, and Zambia), in which relatively open political systems provided the domestic campaigns with space and access, enabling the lobbying of members of parliaments and/or judicial appeals. In the case of Azerbaijan, the study suggests that a greater degree of regime closure and CSO repression was at least partially offset by a relatively facilitatory international environment.

This report takes a first step towards furthering our knowledge on the factors and dynamics that characterize the successful prevention of legal CSO restrictions. Its findings, however, should be treated with caution. Given that they are based on desk studies of four cases selected precisely because of the observed success of resistance, results will have to be assessed in more in-depth studies as well as in the light of a broader set of cases. Future research should also analyze the limits and potential downsides of successful campaigns against NGO laws. Indeed, circumstantial evidence suggests that they may provoke governments to turn to extralegal measures.

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1. INTRODUCTION¹

The current wave of restrictions that are imposing more and more constraints on CSOs in a growing number of countries around the world raises many questions, but one is particularly pertinent: What can be done in response to this phenomenon of shrinking civic spaces?² Existing studies tackling this question largely focus on strategies of adaptation: How can local civil society organizations survive in increasingly difficult contexts, better protect themselves against state restrictions, reduce their vulnerability to governmental attempts at delegitimization, and adjust their “business model” to foreign funding restrictions – and what can external actors and international alliances do to support such strategies?³ To be sure, all these studies also aim at preparing the ground for future improvements, such as by reframing the public debate on civil society, democracy and human rights, or by broadening domestic alliances against civic-space restrictions. However, there is still very little knowledge on strategies for preventing the shrinking of civic spaces in the first place. Anecdotal evidence exists in some individual cases, but to the best of our knowledge there are very few studies that systematically analyze and compare attempts at resisting the introduction of restrictions on civic space.⁴

The present study takes a first step towards closing this research gap by analyzing and comparing four cases in which attempts by governments to increase legal restrictions on civil society organizations were frustrated, aborted, or, at least, significantly mitigated as a consequence of domestic resistance, supported (to varying degrees) by external actors. This said, this study focuses on *successful* cases. Given the lack of both empirical and theoretical knowledge on the topic at hand

1 This report was written in the context of two research networks: The German research network “External Democracy Promotion” (EDP, www.external-democracy-promotion.eu), which between May 2015 and April 2019 was generously funded by the Leibniz Association, as well as the International Consortium on Closing Civic Space (iCon, www.csis.org/programs/international-consortium-closing-civic-space-icon). A previous version of this paper was presented and discussed at the annual iCon meeting in Accra, Ghana, in October 2018. We are grateful for comments by our colleagues in the iCon network and at PRIF as well as to Matthew Harris for language editing.

2 Until now, existing research on the shrinking (or closing) space phenomenon has largely focused on assessing the dynamics and form of restrictions as well as on identifying the causes that explain the overall trend and the variation between countries (see, for instance, Carothers/Brechenmacher 2014; Dupuy et al. 2016). As two of us have argued elsewhere, another key question concerns the normative dimension of the phenomenon at hand: Given that it is hardly convincing to argue that any type of regulation of the civic space is “bad,” while all types of civic activism are simply “good,” a much more thorough and differentiated assessment of the normative arguments in favor of and against civic space restrictions is needed (see Poppe/Wolff 2017). In this report, we deliberately refrain from addressing this issue and, thus, do not discuss the question of whether, under which conditions, and according to which normative benchmarks resistance against NGO laws is actually a good thing. While, politically speaking, we share the overall aim of those resisting the kind of NGO laws discussed here, this does not mean that we necessarily endorse every individual argument or action in this regard, nor that we think that any type of resistance against any kind of NGO law is well-founded.

3 See, for instance, Dwyer (2018); Green (2017); INCLO (2017); Rekosh (2017); Rodríguez-Garavito/Gomez (2018); Ron et al. (2016).

4 We are aware of two policy-oriented papers that (partially) address this: Dodsworth and Cheeseman (2018) focus on the motivation of legislatures in the form of individual parliamentarians’ incentives to protect political space by rejecting restrictive laws in four countries. They briefly compare two of the “success” cases that are also included in our study (Kenya, Kyrgyzstan) with two cases of “failure” (Kazakhstan, Uganda). An ICNL study on “Lessons Learned From Progressive NGO Legal Initiatives” (ICNL 2010) mainly focuses on countries in which progressive legal initiatives have been successfully put forward and contains only one case (Azerbaijan) in which resistance against a restrictive legislative initiative was (partially) successful. The length of the case studies, in both studies, is between one and one and a half pages.

and our expectation that there will be quite different paths to successful resistance, we chose to start by looking at “positive” cases only – instead of comparing successful and failed attempts at resistance.⁵ Furthermore, this study focuses on resistance against one particularly prominent type of civic space restriction: the so-called NGO laws. The phenomenon of shrinking civic spaces, of course, covers a whole range of legal, administrative and non-legal restrictions that constrain the establishment, the autonomy, the capacity and/or the freedom of action of civil society groups (see box 1). We focus here on restrictive laws that specifically target formally established civil society organizations as one of the most prominent ways in which civic space is intentionally reduced in the current context (Carothers/Brechenmacher 2014; Dupuy et al. 2016; Poppe/Wolff 2017; Rutzen 2015).⁶ Improving our understanding of the conditions and the dynamics of successful resistance against NGO laws is, therefore, of particular importance. In addition, because such legal restrictions take the form of an explicit legislative act adopted by means of an official political decision-making process, both this process and the resistance provoked by it are phenomena that can be observed and analyzed relatively well (in comparison with other, more clandestine and/or ad hoc types of restrictive measures and the countermeasures these may give rise to). It is important to note that, as we discuss in the conclusion to this report, we do not expect successful resistance to legal restrictions to be representative of a broader positive trend in terms of a general prevention of civic space restrictions – often, the opposite is true and NGOs suffer increased *extralegal* restrictions at the behest of frustrated governments.

We identified all potential cases of successful resistance against attempts by governments to increase legal restrictions on civil society organizations. We did so by searching academic studies, reports, media articles and blog posts on the issue of shrinking civic space for references to countries in which (draft) NGO laws met with significant resistance from within and/or from outside the society in question and in which at least partial success of this resistance was mentioned.⁷ The four cases analyzed and compared in this study are Azerbaijan (2009), Kenya (2013–2016), Kyrgyzstan (2013–2014), and Zambia (2009–2014).⁸ These four cases were selected because (a) in these cas-

5 In methodological terms, this implies a “no-variance design” deliberately based on selection in terms of the “dependent variable.” A well-established technique in qualitative, case-oriented research (see Brady/Collier 2004), this implies that the main strategy of causal inference applied here is within-case analysis (within the constraints of relatively brief desk studies). The comparison of four cases from two different regions (see below) serves as a means for controlling for idiosyncratic features of the individual countries or regions, and thus provides opportunities for identifying potentially generalizable causal factors and processes. As we briefly discuss in the conclusion, research that follows this exploratory study should include broader comparative analyses that also assess cases of failed resistance. For a study on an individual “negative” case (Ethiopia), see Birru/Wolff (2019).

6 In this paper, the term NGOs refers to formally established not-for-profit organizations that claim to represent some general public interest. The term CSOs broadly refers to all kinds of organized groups that are neither governmental nor for-profit. For the type of restrictive legislation this study is focused on, we use the established term “NGO law,” even if the specific legislative initiative may also target CSOs in a broader sense.

7 In addition to sources that provide evidence on individual cases, lists of examples are provided by Carothers (2016: 367–368), Carothers and Brechenmacher (2014: 11, 36–37), Dodsworth and Cheeseman (2018), and ICNL (2010, 2014), with up-to-date information provided by the country reports in ICNL’s Civic Freedom Monitor (ICNL 2019) as well as by the CIVICUS Civic Space Monitor (<https://monitor.civicus.org>).

8 Two of these four cases (Azerbaijan and Kyrgyzstan) are briefly assessed by Carothers and Brechenmacher (2014: 36–37), as are Kenya and Kyrgyzstan by Dodsworth and Cheeseman (2018). Azerbaijan, Kenya and Kyrgyzstan are discussed as successful legal reform initiatives by ICNL (2010: 9–10; 2014: 3–4). Interestingly, when it comes to the

es resistance to restrictive legal initiatives was clearly successful, at least in the short term, and (b) because they represent two particularly important regions when it comes to the issue of shrinking civic space (Sub-Saharan Africa and the post-Soviet space). We (c) included two cases from each of these regions so that the set of cases is not too diverse. Finally (d), these four cases also represent different ways in which resistance against legal restrictions can be successful: In the cases of Kenya and Kyrgyzstan the adoption of legal restrictions was prevented; in Azerbaijan, planned legal restrictions were significantly softened; and in Zambia, a new NGO law was effectively suspended after being adopted.

BOX 1: SHRINKING CIVIC SPACES: AN OVERVIEW

Since the turn of the century, observers have noted a trend towards increasing restrictions that limit the space, capacity and/or autonomy of civil society actors in more than 60 countries. The trend is as global as it is diverse. It is mostly located in the Global South, including the post-Soviet space, but can also be observed in European countries, Israel or the US. All kinds of political regimes are affected: democratic and autocratic ones as well as all those in between. There are a wide variety of ways in which civic spaces are restricted and this may include legal restrictions to freedom of association, assembly, or expression, complicated registration procedures and administrative hurdles, attempts at political delegitimization as well as extra-legal forms of restriction and outright repression. A prominent strategy for weakening domestic civil society groups is to cut them off from international support, for instance through the adoption of NGO laws that restrict or prohibit the foreign funding of (certain types of) civil society organization (for an overview, see Carothers/Brechenmacher 2014). While the phenomenon is generally problematic with a view to common democracy and human rights standards, it is important to acknowledge that every state regulates, and in doing so restricts civil society, and that such restrictions are not generally illegitimate. Normatively, a particularly contentious issue concerns restrictions on foreign civil society support, given that proponents here can refer to well-established international principles such as national sovereignty and the right to collective self-determination, and point to the long history of postcolonial “Western” interference and paternalism (for more on this, see Poppe/Wolff 2017).

The four case studies presented in this report are desk studies based on an analysis of publicly available primary sources and existing analyses by academic experts, NGOs and international organizations, as well as media reports. In terms of structure, the following chapters all start with a brief introduction that presents the general background, give an overview of the planned legislation, and then discuss local as well as international responses. They also summarize and highlight the most important findings with regard to the specific case at hand. The conclusion to the report discusses

case of Zambia, there is not even an entry on this country in ICNL's Civic Freedom Monitor (ICNL 2019). However, the CIVICUS Civic Space Monitor does provide information on Zambia (see, for instance, CIVICUS 2017).

the comparative findings within the broader context of shrinking or opening spaces and identifies, on the basis of the four cases, conditions and dynamics of successful resistance against NGO laws.

2. AZERBAIJAN

Since the country's independence in 1991, Azerbaijan's civil society sector has developed notably. Today, according to the ICNL Civic Freedom Monitor, there are "more than 4,500 NGOs registered in the country," which work on diverse issues "including human rights, education, culture, health, social protection, environmental protection, etc." (ICNL 2019; see also Abbasov 2010; Ibadoghlu 2009). This development was supported by a liberalization of the legal framework: In 2000, under President Heydar Aliyev, the NGO law from 1992 was replaced "by a much more progressive" one (ICNL 2019). In recent years, however, the trend to liberalization has come to a halt. This development is associated with Ilham Aliyev, son of the former President, who assumed the presidency in 2003, as well as with the "massive inflow of petro-dollars [that] started to fill state coffers around the same time (Abbasov 2010: 13). In 2007, an NGO Support Council was established that aimed at providing support to Azerbaijani NGOs and at facilitating their cooperation with the government (ICNL 2019; see also Abbasov 2010: 13; USAID 2010: 60). However, since 2009 observers have noted increasing civic space restrictions (Charity & Security Network 2013: 2) and, since 2013, a "massive crackdown on civil society, journalists and political opponents" (Bertelsmann Stiftung 2018a: 12; see also IPHR 2016; CoE 2017). While there have been some improvements over the past few years (especially from 2015 to 2017) when it comes to the regulation of NGOs in general and of foreign organizations and grants in particular, registration and reporting requirements remain a problem for both domestic and foreign NGOs in Azerbaijan. This has led to several cases of NGOs successfully filing suits before the European Court of Human Rights (ECHR) (ICNL 2019).

These developments are reflected in overall assessments of the political situation in Azerbaijan. In the Freedom House ranking, Azerbaijan was temporarily ranked "partly free" between 1997 and 2002, reflecting a gradual improvement in civil liberties, but has been ranked "not free" since 2003. For 2013, Freedom House reported a further deterioration in civil liberties and, for 2015, a further reduction in political rights (with both changes continuing to date).⁹ According to V-Dem's Regimes in the World measure, Azerbaijan has been an "electoral autocracy" since independence.¹⁰

⁹ All data is taken from the Freedom House website. See <http://www.freedomhouse.org>.

¹⁰ This measure distinguishes between four regime types: liberal and electoral democracies, electoral and closed autocracies. See <https://www.v-dem.net/en>. The Bertelsmann Transformation Index (2006–2018) mostly ranks Azerbaijan among the "hard-line autocracies", but ranked it as a "moderate autocracy" during 2009 and 2010. The BTI, in addition, distinguishes among three types of democratic regime (in consolidation, defective and highly defective). See <https://www.bti-project.org>.

2.1 OVERVIEW OF THE PLANNED LEGAL RESTRICTIONS

On June 8, 2009, the Azerbaijani government submitted amendments to the Law on Non-Governmental Organizations (NGO Law) to parliament. These amendments, in particular, “would have banned nongovernmental organizations from receiving more than 50 percent of their funding from abroad, on top of imposing mandatory registration for all NGOs as well as other restrictions” (Carothers/Brechenmacher 2014: 36; see also Herkel/Jivkova 2009; Powley Hayden 2009a). According to an appeal, which was coordinated by the human rights activist Leyla Yunus and supported by more than 100 representatives of Azerbaijani CSOs, the draft amendments included the following regulations:

- Unregistered NGOs are banned, and administrative action can be brought against their founders. The fine for non-registration is up to €50,000 and detention is probable;
- 1. NGOs can only be registered after a confirmation by the Ministry of the Interior and of National Security;
- 2. If an officially registered NGO does not have branches in one-third of the administrative districts, it will not be allowed to carry on any activities in the country;
- 3. NGOs are not allowed to receive more than 50% of their funding from abroad;
- 4. Foreign NGOs can only operate in Azerbaijan with a bilateral agreement between Azerbaijan and their countries (Yunus et al. 2009: 1).¹¹

In response to strong resistance (discussed below), the debate in parliament – originally scheduled for June 19 – was postponed. When the amendments were finally discussed and approved on June 30, the most restrictive provisions were removed, including the sanctions against unregistered NGOs, the significant fines for NGO managers, as well as the planned limit on foreign funding (see Ibadoghlu 2009; ICNL 2010: 9–10; IFEX 2009a; Powley Hayden 2009b; USAID 2010: 61). According to ICNL, “over 80 percent” of the recommendations made by the coalition that opposed the amendments were ultimately accepted (2010: 10). This revision came as a surprise to many, including local NGO activists, who had expected parliament to “gladly accept the amendments” proposed by the government (Yunus et al. 2009; see also Powley Hayden 2009a). In fact, given that the Azerbaijani parliament is generally regarded as dominated by the executive branch (Bertelsmann Stiftung 2018a: 14–15), the decision to backtrack on the planned restrictions most probably reflected a corresponding decision on the part of the Azerbaijani government.

2.2 LOCAL RESPONSES

Local resistance against the draft law formed quickly: just three days after the announcement, representatives of 50 national NGOs established a Civil Society Defense Committee, which conducted “a series of public debates, round-tables and seminars” on the proposed amendments (Herke/Jivkova 2009: 2). During one of these debates, they were joined by parliamentarians from the opposition, heads of NGOs, and the media, as well as by representatives of the US and British embassies, the Ambassador of Norway, and international donor organizations (IRFS 2009). Speakers especially empha-

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sized the critical role of local civil society and foreign donors in the social and economic development of Azerbaijan. They criticized the amendments' negative impact on civil society and drew attention to their inconsistency with democratic values in general and Azerbaijan's obligations to the ECHR, the OSCE, and the Council of Europe (CoE) (see HRHN 2009, IRFS 2009). Participants urged complete rejection of the draft amendments and argued that they were "intended to destroy civil society and freedom of speech" (IRFS 2009). On June 18, "a group of approximately 300 NGO leaders and activists gathered in Baku to discuss the draft law" (Powley Hayden 2009b). The Defense Committee also "sent letters to the President of the Republic and the Parliament with the request not to adopt and put into force the proposed amendments" (Herkel/Jivkova 2009: 2).

During one of the discussion forums organized by the Defense Committee, it was decided to organize a protest in front of the parliament building on June 19, the day originally scheduled for the parliamentary decision on the amendments (HRHN 2009). The protest was, however, not authorized by the Baku Mayoral Office (Herkel/Jivkova 2009: 2; IRFS 2009). As a consequence, "only a handful of people" gathered in front of the legislature and were quickly removed by the police (Powley Hayden 2009b). On the day of the parliamentary approval on June 30, when "[a]bout 100 people representing civil society groups" protested, the protest "was forcibly interrupted by plainclothes police, who destroyed the protesters' signs and prevented the demonstrators from nearing parliament" (IFEX 2009a).

In a complementary move, the NGO Council – the very body established by the Azerbaijani government to administer state-civil society relations – joined with others to adopt a legal reform strategy. According to ICNL, the NGO Council, the ad hoc coalition of Azerbaijani NGOs (the Defense Committee), as well as "representatives of international donors and NGOs" had met immediately after the amendments to the NGO law were introduced "to develop a strategy to address the draft law" (ICNL 2014: 12). On June 19, the Council "posted online its suggestions for improving the Azerbaijan NGO Draft Law for public discussion, drawing on expert technical analysis" (ICNL 2014: 10).

Furthermore, more than 100 representatives of Azerbaijani NGOs signed the above-mentioned Appeal of Representatives of Non-Governmental Organizations in Azerbaijan Concerning the Threat of Passage of the Law That Will Severely Limit the NGO Activity in the Country (Yunus et al. 2009). In this open letter, NGO representatives also urged other (non-Azerbaijani) organizations and representatives to "appeal to the Azerbaijani officials with the statement of inadmissibility of the [...] amendments to the law of NGOs and their non-adherence to the membership of Azerbaijan on OSCE, CoE and participation of the country in the development programs such as EU's 'Eastern Neighborhood'" (Yunus et al. 2009).

2.3 INTERNATIONAL RESPONSES

External actors reacted quickly as well. The most notable responses came from international civil society organizations and alliances such as Amnesty International (AI) and International Freedom of Expression Exchange (IFEX), from the Parliamentary Assembly of the Council of Europe (PACE), the

OSCE, as well as from the US Embassy. These external interventions focused on reminding the Azerbaijani government of its membership obligations in several international organizations and regimes and, in particular, referred to democratic and human rights norms.

AI started an international campaign in reaction to the proposed amendments and called upon the government “not to pass any amendments that could be used in effect to prevent the legitimate activities of media and civil society organizations” (AI 2009) and stating that, instead, Azerbaijan “should bring its existing legislation and practice into line with the government’s international obligations” (AI 2009). In a similar vein, in an open letter to its chairman 30 members of IFEX urged the Azerbaijan parliament to refrain from adopting the amendments (IFEX 2009b), arguing that approval of the planned legal changes would be considered “an egregious step backwards for Azerbaijan and a serious blow to the Azerbaijani government’s self-professed aspirations for ‘Euro-Atlantic’ integration” (IFEX 2009b). IFEX specifically argued that the proposed amendments would “blatantly contradict” provisions of the International Covenant on Civil and Political Rights (ICCPR) and the ECHR, as well as of “obligations that Azerbaijan has undertaken before the Council of Europe, the European Union, the United Nations, the OSCE and other international bodies” (IFEX 2009b).

On June 16, 2009, the Council of Europe – jointly represented by the president of PACE, the president of the Committee of Ministers and the CoE’s Secretary General – issued a strong statement, calling on the Azerbaijani authorities “to postpone the decision on the proposed amendments.” Declaring themselves “very concerned” about some of the proposed amendments, the representatives argued that these could “create serious obstacles for the freedom of expression and normal functioning of the civil society in Azerbaijan” and added that approval of the amendments “may even lead to the closing of the Council of Europe School of Political Studies in Baku” (quoted in Herkel/Jivkova 2009: 4; see also Powley Hayden 2009a). PACE’s co-rapporteurs on recent developments in Azerbaijan specified that the changed NGO Law would “threaten the development of the civil society in Azerbaijan in breach of Articles 10 and 11 of the European Convention of Human Rights and other relevant European democratic standards,” criticized that the amendments were placed on the agenda of the parliament “in a hurry and without any prior debate or consultation with the civil society itself or international organisations,” and finally reminded Azerbaijan “of its obligations and commitments as a member state of the Council of Europe” (Herkel/Jivkova 2009: 2–3).

Finally, representatives of the OSCE and the US also criticized the planned amendments (Carothers/Brechenmacher 2014: 36). In a statement issued on June 17, 2009, then US Ambassador to Azerbaijan, Anne E. Derse, warned that the proposed amendments “would contravene international standards, result in further restrictions on freedom of speech and association, and put development of civil society in Azerbaijan at risk” (quoted in Powley Hayden 2009a; see also Carothers/Brechenmacher 2014: 36). Derse also encouraged a “broad and open debate before any changes are promulgated, including input from civil society leaders in Azerbaijan and consultation with the Venice Commission of the Council of Europe” (quoted in Powley Hayden 2009b).

2.4 FINDINGS

Within an extremely short period of roughly three weeks, Azerbaijani CSOs succeeded in forming an ad hoc coalition that organized a whole set of activities that combined advocacy, public awareness-raising and protest. Supported by external state and non-state actors, this resistance successfully pushed the Azerbaijani parliament to significantly soften the draft amendments, including deleting the planned restrictions on foreign funding. While it is impossible to tell what exactly led to the change of mind on the part of the Azerbaijani government, observers agree that the quick coordination of a broad and diverse set of domestic and external, non-governmental and governmental actors that mobilized joint pressure from both the inside and externally were the key to success (see Abbasov 2010: 15; Carothers/Brechenmacher 2014: 36; ICNL 2014: 12; IFEX 2009a; Powley Hayden 2009b; USAID 2010: 3).

In terms of the means of resistance, the successful campaign adopted a two-track strategy that combined principled and vocal rejection with concrete “suggestions for improving the law using an expert technical analysis that highlighted the most dangerous provisions of the law” (ICNL 2014: 14). Regarding the overall framing of the resistance, the lack of previous communication and consultation with local NGOs and international organizations by the government and the disregard of international treaties gave organizations at both the national and the international level an easy entry point for criticism. The key arguments made referred to the proposed legal initiative’s impact on democracy and civil society in Azerbaijan, but the focus was ultimately not so much on the domestic situation but on the country’s international obligations and the negative consequences the changed NGO law would have on Azerbaijan’s integration in common European (or Euro-Atlantic) structures. This suggests that Azerbaijan’s membership in a whole series of European organizations and regimes that come with a relatively dense set of norms and procedures provided an important context condition that enabled the successful campaign against the planned legislative restrictions.¹² Within Azerbaijan, the fact that, around 2009, local civil society was “among the strongest in the region, with several well-institutionalized, active, efficient, and independent organizations working in almost all areas of public life” was arguably important, as was the existence of a number of “strong human rights organizations and watch-dogs enjoying well-established links with international organizations and Western human rights groups” (Abbasov 2010: 15). Still, it has to be noted that in recent years the situation for Azerbaijani CSOs has deteriorated dramatically (Ismayil/Remezalte 2016: 3). Particularly in 2014, a wave of repressive measures against NGOs working in the field of democracy, human rights and other areas deemed sensitive has significantly stifled their activities – which are now mostly being carried out in exile (Brot für die Welt 2018: 56–57).

12 That this international integration is of strategic importance to the Azerbaijani government has also been confirmed by revelations surrounding a bribery scandal according to which Azerbaijani officials systematically handed expensive gifts to selected members of the Council of Europe’s parliamentary assembly in order to “buy” positive assessments concerning the situation in Azerbaijan (see CoE 2018: 149).

3. KENYA¹³

During the authoritarian rule under the leadership of president Daniel arap Moi (1978–2002), operational space for civil society groups was severely obstructed (Freedom House 2003). Yet, “through their efforts to advance political rights and freedoms as well as to broaden the democratic space” CSOs were able to contribute “immensely towards the transition (in 2002) from authoritarian to democratic rule” (ICNL 2019; see also Freedom House 2004). Under president Mwai Kibaki (2002–2013), whose democratic reform agenda included a decided broadening of civic space, Kenya experienced a significant “improvement of Government-CSO relations as meaningful dialogue and increased engagement between the two sectors began to take place” (ICNL 2019). Against this backdrop, 42 Kenyan CSOs in 2009 established the Civil Society Organizations Reference Group (CSORG) in order to organize an inclusive drafting process of a new Kenyan NGO law (CSORG 2013a). This envisaged law was meant to replace the existing NGO Coordination Act of 1990 (and other related laws), which, in the eyes of many Kenyan CSOs and politicians alike, included overly burdensome and complicated provisions for the sector (CSORG 2014: 14–16; ICNL 2019). In 2012, after three years of consultations with a variety of stakeholders, the Public Benefits Organizations (PBO) Act was finalized and submitted to the National Assembly. In January 2013, the PBO Act was adopted and signed into law by then president Mwai Kibaki (Churchill 2013; Republic of Kenya 2013a: 421). Despite this, the Act did not enter into force because general elections in March 2013 prevented the responsible minister from publishing the new law in the Kenya Gazette.

After the elections, under the new government led by president Uhuru Kenyatta, government-CSO relations deteriorated drastically. Instead of implementing the PBO Act, the Kenyatta government announced a much stricter approach to regulating NGOs. Already during the campaign, Kenyatta’s Jubilee coalition had promised to introduce “a Charities Act to regulate political campaigning by NGOs,” to ensure that NGOs “do not engage in party politics” and to “establish full transparency in funding” (The Jubilee Coalition 2013: 65). On October 30, 2013, the government put these words into action and submitted a restrictive set of amendments to the PBO Act to parliament. At the core of these amendments was a 15% cap on foreign funding (Republic of Kenya 2013b).

Among observers, there is broad consensus that this move of the new government mainly reflected the intention of president Kenyatta and vice president William Ruto to both punish and incapacitate a specific group of CSOs: namely, those largely foreign-funded advocacy NGOs that were active in the human rights and governance field and were perceived by the new authorities as threatening their political power. A particularly annoying activity concerned the collection of evidence in the aftermath of the post-election violence in Kenya in 2007–2008 (CIPEV 2008: 5–6). This evidence contributed to the opening of a case at the International Criminal Court (ICC) against Kenyatta and Ruto for crimes against humanity (ICC 2010) and the issuing of two petitions to the Constitutional Court

13 This case study is based on a comprehensive process-tracing analysis conducted by one of the authors in the context of a Master’s Thesis at Goethe University Frankfurt (Hetz 2017).

of Kenya.¹⁴ These and related actions had led to a growing hostility of Kenyatta and Ruto (and their parties) towards the NGOs involved. For instance, after returning from a hearing at the ICC in 2011, William Ruto emphasized that “NGOs should stop interfering with government matters, writing letters to their donors abroad to support the ICC intervention and compiling reports about the postelection violence” (quoted in HRW 2013a). Shortly after the 2013 election, a spokesperson of President Kenyatta publicly called some of the NGOs involved in the actions described above and their donors a “civil society web of evil” (quoted in Migiro 2013).

As far as the overall development of the political situation is concerned, Freedom House has continuously ranked Kenya “partly free” since 2002. Between 2007 and 2012, however, the ratings for both political rights and civil liberties experienced a gradual decline and they have remained at the lower level until today.¹⁵ This assessment is confirmed by V-Dem’s “Liberal Democracy Index”, in which Kenya scores significantly higher than Azerbaijan throughout the 2000s, even if in terms of the overall regime type V-Dem also considers Kenya to be an “electoral autocracy” for most of the time under consideration.¹⁶ In the Bertelsmann Transformation Index (2006–2018), Kenya is considered a “(highly) defective democracy”.¹⁷

3.1 OVERVIEW OF THE PLANNED LEGAL RESTRICTIONS

As already mentioned, the set of amendments to the PBO Act submitted to parliament at the end of October 2013 included a series of restrictions, most notably with a view to the foreign funding of NGOs. More specifically, the respective provision stated that a PBO “shall not receive more than fifteen percent of its total funding from external donors” (Republic of Kenya 2013b: 980). According to the PBO Act, the term “PBO” would replace the term “NGO” and its regulations would be valid for all organizations registered as PBOs. The proposed funding cap would, therefore, affect all NGOs operating in Kenya, national or international (INGOs) and regardless of their field of activity. Given that most Kenyan NGOs are heavily dependent on foreign funding, the amendments would have had devastating consequences for the entire NGO sector in the country: In 2013, “99 % of funding by NGOs came from western donors, with an insignificant percentage being raised from local donations” (Ochido 2013: 69). After strong protest and the large-scale campaigning by local NGOs to be analyzed below, the majority of parliamentarians rejected the amendments during the second reading of the draft law on 4 December 2013. As a consequence, the PBO Act remained as it had been (Houghton/Muchai 2014b: 1, 10).

14 The first of these petitions aimed at excluding Kenyatta and Ruto from the presidential race because of the ongoing ICC prosecution; the second was submitted one day after the election in 2013 and called on the Court to nullify the election results because of electoral manipulation (The Star 2012; Presidential Election Petition 2013).

15 All data is taken from the Freedom House website. See <http://www.freedomhouse.org>.

16 In 2016, Kenya was temporarily ranked an “electoral democracy.” See <https://www.v-dem.net/en>.

17 See <https://www.bti-project.org>.

Although the Kenyan government has since then made four more attempts to introduce restrictive amendments to the PBO Act, and in one case to impose a new funding cap, none of them succeeded in the face of resistance by local NGOs (see Hetz 2017). The PBO Act itself has still not been implemented.

3.2 LOCAL RESPONSES

The local response to the draft law was swift. To organize their resistance against the restrictive amendments, a diverse set of locally operating NGOs came together and formed a broad-based coalition under the umbrella of the already existing CSORG. Between November and December 2013, representatives of more than 50 NGOs from a variety of sectors such as human rights and governance, development and social service delivery met regularly to coordinate their actions. During their initial strategy meeting on 7 November, they decided to apply a two-track approach to campaign for the rejection of the amendments: This involved extensive lobbying of the members of parliament on the one hand and a campaign to mobilize the public on their behalf on the other hand (Dodsworth/Cheeseman 2018: 7; Houghton/Muchai 2014a: 341).

Just a few days later, the CSORG carried out two impact assessments of the proposed amendments, which primarily emphasized their negative socioeconomic consequences for Kenya (Houghton/Muchai 2014a: 341). The results of these assessments quickly became the basis of a communication strategy that was applied on both tracks and that used a narrative that prominently highlighted the importance of NGOs for the economy, development and social service delivery in Kenya, as well as the negative consequences for these sectors of the proposed amendments and the foreign funding cap in particular (see Hetz 2017).

As a starting point to their substantial lobbying activities, the CSORG members published an open letter to the MPs that stated that the proposed amendments, if passed, would “not only constrain the civil society’s contribution to national development but also make the attainment of socio-economic rights that much more difficult” (CSORG 2013b). Continuing this line of argumentation, CSORG members throughout November distributed leaflets to the parliamentarians (Houghton/Muchai 2014a: 342), which stated that the proposed funding cap “will be a big blow to the [civil society] sector as the 8,500 PBOs in the country are heavily donor reliant for most of their activities where 1,757 of these are delivering 47% of Kenya’s public health services.” The leaflet further contained a list of negative effects of the amendments, including that “20 Million Kenyans will NOT access basic health care” or that “240,000 Kenyans will LOSE their job.” and called on all MPs to reject the amendments bill (Health NGO Network 2013). On 25 November, representatives of the CSORG got their chance to appear before the Justice and Legal Affairs Committee of the National Assembly, where they urged the parliamentarians “to withdraw the Miscellaneous Amendments altogether or drastically amend them,” arguing that the amendments “were anti-developmental” (Houghton/Muchai 2014a: 342; see also Dodsworth/Cheeseman 2018: 6–8; ICNL 2014: 4).

On the second track, the CSORG used social media channels, media statements as well as personal meetings to mobilize the general public to put pressure on the members of parliament. For example, on 9 November, the CSORG issued a Facebook post stating that the amendments “will have serious negative impacts on Kenya’s social and economic development” (CSORG 2013c). Highlighting the negative social consequences of the amendments for the Kenyan people, the NGO and CSORG member Article 19 issued an online statement that emphasized that the “amendments will immediately cut off vital services provided by NGOs in crucial areas such as health education and water [...] and will have dramatic impact on some of the most vulnerable members of society” (Ochieng 2013). In an interview in late November, a spokesperson of another CSORG member organization stated that “the bill has far reaching consequences for the people who access services at affordable rates,” reminding the public that as a result of the planned amendments NGOs would no longer be able to provide the 47% of public health services in Kenya (Muraya 2013) that they presently contribute. In addition, several NGO representatives throughout November distributed the above-mentioned leaflets to citizens and collected signatures for a petition to parliament under the title “Reject the amendment and save 20 million Kenyans” in the center of Nairobi (Houghton/Muchai 2014a: 342; Maracci 2013).

3.3 INTERNATIONAL RESPONSES

In their efforts to prevent the adoption of the amendments bill, the local NGO coalition received support from a number of INGOs. On November 5, 2013, Freedom House criticized the Kenyan government, stating that “the proposed cap on foreign funding would violate Kenya’s obligations under international treaties” such as the UN Declaration on Human Rights Defenders, which guarantees NGOs’ right to receive foreign funding (Freedom House 2013). Following this line of argumentation, the International Federation for Human Rights (FIDH) two weeks later urged the “Kenyan authorities to comply with the provisions of the UN Declaration on Human Rights Defenders” (FIDH 2013). A group of 20 INGOs operating in Kenya warned the Kenyan authorities in late November that “the amendments will do more harm than good to Kenya’s PBOs and the interests of the Kenyan people they serve” (quoted in Migiro 2013).

On December 3, one day before the amendments were to be discussed in parliament, three UN Special Rapporteurs criticized the Bill as evidence “of trying to exert more control over independent groups using so-called NGO laws” and “called on the Kenyan authorities to immediately suspend the legislative process of the Bill, and to re-evaluate it in line with international human rights norms and standards” (OHCHR 2013).

By contrast, the international donor community in Kenya remained relatively cautious and silent in its efforts to support the prevention of the amendments. The most comprehensive action in this regard was a statement of 21 “development partners of Kenya,” which was published in the local media. In this statement, high-level representatives from the EU and several EU member states, Australia, Japan, the US, the African Development Bank, and the World Bank encouraged review of the proposed amendments. Explicitly supporting the key arguments made by the NGO campaign against the draft

law, the statement expressed concern that the amendments would “restrict or even prevent delivery of assistance in areas such as humanitarian aid, health, education, agriculture, implementation of the Constitution and other areas targeting marginalized groups. [...] This could ultimately risk curtailing Kenya’s economic progress” (Ambassadors et al. 2013).

3.4 FINDINGS

The successful resistance against the planned legal NGO restrictions in Kenya was driven by a powerful domestic campaign which carried out a comprehensive advocacy campaign and was coordinated by a pre-existing alliance of local NGOs. While, according to CSORG members, the attempt to mobilize the public to pressure the government turned out to be “least effective” (Houghton/Muchai 2014a: 344), observers and existing studies agree that the persistent lobbying efforts by local NGOs ultimately convinced the members of parliament to drop the amendments (Hetz 2017; Dodsworth/Cheeseman 2018: 6–8; ICNL 2014: 4). Particularly powerful in this context was the use of a socio-economic narrative that highlighted the contribution by NGOs to economic development and social service delivery in Kenya and the respective far-reaching negative consequences of the envisaged NGO funding cap. During the second reading of the amendments, several MPs referred to this narrative and explained their rejection in terms of the risks for the social and economic development of Kenya. In parts, MPs even cited exactly the arguments and numbers that the CSORG had used to lobby decision-makers.¹⁸

Even though external actors issued a series of statements in support of the domestic campaign, the overall international response was quite cautious (see Wood 2016). According to ICNL, the “most-ly quiet role” of external actors was still important, given that they “served as conveners as well as leveraging influence over individual government officials” (ICNL 2014: 4; see also Dodsworth/Cheeseman 2018: 8). However, this role is hard to pinpoint and was, in any case, clearly secondary.

In terms of structural context conditions, it was a pre-existing NGO alliance (CSORG) that enabled a powerful civil society coalition to be quickly formed, while a relatively accessible parliament with relative autonomy from the government provided the political opportunity structure for societal lobbying efforts.¹⁹ Regarding the framing of the resistance, the decision not to focus on democratic values and human rights but, instead, to highlight immediately tangible socioeconomic consequences for the population was arguably crucial in convincing policymakers – and it offered a successful counter-narrative to the governmental attempts to depict NGOs as foreign-funded agents that illegitimately interfere with Kenyan politics. As the ICNL (2014: 4) concludes, it was

18 One MP, for example, stated that NGOs “are providing 47 per cent of the health services in Kenya today [...]: Does the government want us to die after the NGOs are removed from the country?” (quoted in Houghton/Muchai 2014b: 3).

19 Whereas criticism in parliament was strongest among parliamentarians of the opposition, it is reported that progressive members of the government party were sometimes “strategically absent from the House” (Dodsworth/Cheeseman 2018: 7).

very important for civil society representatives to understand the priorities and vocabulary of government officials in order to make their case persuasively. For example, “empowering citizens to participate in the development of Kenya” tended to be more compelling to officials than “defending the rights guaranteed to CSOs in international law.”

The success of this strategy, however, was also facilitated by the government’s attempt to introduce a *general* foreign funding cap for *all* NGOs. In a hypothetical scenario in which the foreign funding restrictions would have targeted a specific subset of advocacy NGOs only, it would have been much more difficult to unite the NGO sector against the amendments and to put forward the socio-economic narrative (see also Hetz 2017).

4. KYRGYZSTAN

Kyrgyzstan has been called an “island of democracy” (Bleck/Logvinenko 2018: 809) in Central Asia and its civil society “is without doubt the most vibrant and active in Central Asia” (EEAS 2014: 2; see also ICNL 2019). Civil society organizations played an important role in the political transformation of the country. The Tulip Revolution that led to the ouster of an increasingly autocratic government in 2005 was largely organized by local CSOs and political opposition groups with the support of international donors and external activists (Hess 2010: 38). After the subsequent government was also forced to resign following spontaneous protests in 2010, Kyrgyzstan’s political system was transformed into a parliamentary system with a strong presidency (Schmitz/Wolters 2012: 11). These developments are directly reflected in the Freedom House ranking: since 2005, Kyrgyzstan has been categorized as “partly free” (with the temporary exception of 2009, in which it was ranked as “not free”). The scores for political rights and civil liberties place the country between Kenya and Azerbaijan in ranking.²⁰ According to V-Dem’s Regimes in the World measure, Kyrgyzstan has largely been an “electoral autocracy” since 1995 but, in recent years, has been moving between “electoral autocracy” and “electoral democracy.” Since 2011, its scores on the “Liberal Democracy Index” have been roughly similar to Kenya’s, and significantly better than Azerbaijan’s.²¹ During these years, the Bertelsmann Transformation Index has placed Kyrgyzstan (with Kenya) among the “(highly) defective democracies.”²²

The Kyrgyz NGO sector, although strong and active, is highly centralized and dependent on foreign funding. This had led parts of the political elite to believe that some NGOs are working as paid political activists for foreign interests (Bleck/Logvinenko 2018: 812). While many NGOs work in service delivery and on socioeconomic development issues, a small group of (relatively large) NGOs operate as watchdog and advocacy organizations and seek to hold the government accountable (Bleck/

20 All data is taken from the Freedom House website. See <http://www.freedomhouse.org>.

21 See <https://www.v-dem.net/en>.

22 See <https://www.bti-project.org>.

Logvinenko 2018: 812–813). Civil society groups can generally operate freely, even though the climate has become more adverse in recent years. Foreign funding is a particularly contentious issue, even more so in the aftermath of the Maidan events in Ukraine in 2014, which, according to media reports, were perceived by Kyrgyz policymakers as an archetype of foreign influence (Podolskaya 2016).

In recent years, the Kyrgyz government has sought to develop stronger ties with Russia and has distanced itself from “the West.” After the US government granted an award to an imprisoned Kyrgyz human rights activist in 2015, the Kyrgyz government cancelled a 1993 cooperation agreement (HRW 2017). At the same time, the government assumed an increasingly restrictive stance towards CSOs and independent media, along with “a deepening of authoritarian tendencies and an increase in anti-Western sentiments” (Glushkova/O’Neill 2016: 8).

4.1 OVERVIEW OF THE PLANNED LEGAL RESTRICTIONS

In September 2013, three national-conservative parliamentarians proposed amendments to the law on non-commercial organizations known as the Draft Law on Foreign Agents. Inspired by the Russian Foreign Agents Law, the initial draft provided for legal restrictions for any foreign and foreign-funded NGOs that engaged in “political activities” (Glushkova/O’Neill 2016: 19). These NGOs would have had to register as foreign agents and to mark publications with a foreign agent label. In addition to these reputational hurdles, NGOs receiving foreign funding would have been subject to additional administrative requirements, namely the submission of financial records to the government and periodic financial audits (Glushkova/O’Neill 2016: 19; see also ICNL 2014: 3). The draft law was justified in terms of enhancing transparency and accountability of NGOs and, as a media report summarizes the official discourse, as a protection “from Arab Islamists and gay-loving Americans” (Trilling 2014; see also Lelik 2016). In general, the sponsors of the law used negative and discrediting rhetoric, accused NGOs of working on behalf of foreign actors and jeopardizing “national values, cohesion and security” (IPHR and Legal Prosperity Foundation 2017: 6).²³ Advocates of the law also referred to the US Foreign Agents Registration Act, copying the justification for the Russian law verbatim (Glushkova/O’Neill 2016: 22; IPHR 2015: 2).²⁴

From the outset, leading Kyrgyz politicians expressed their reservations about the draft law. In 2013, then President Atambayev even publicly declared that there was no need for such a law (HRW 2013b). However, Atambayev’s opinion on the law shifted during the legislative process. In 2015, he openly supported the proposed restrictions commenting that “under the guise of human rights organizations,” NGOs were “trying to destabilize the situation in the country” as had happened in the Ukraine (quoted in Putz 2016a).

23 This discourse in particular targeted NGOs working on politically sensitive issues such as human rights education, LGBT or minority rights (IPHR 2015: 3).

24 In a BBC interview in November 2013, President Atambaev emphasized “that the primarily analogic law was adopted in the US, the cradle of democracy, not in Russia” (ICNL 2014: 4).

The draft law was delayed for almost two years until, in June 2015, it was endorsed by a parliamentary majority in its first reading (Glushkova/O'Neill 2016: 21; HRW 2015). However, the law was mitigated substantially afterwards to the extent that the term "foreign agents" was deleted before approval in the second reading in April 2016 (see Glushkova/O'Neill 2016: 21–22). The parliamentary elections in October 2015 proved to be conducive to the success of the NGO campaign: During these elections, many of the conservative-nationalist supporters of the original bill lost their seats. In addition, while opponents of the bill were still concerned about the remaining restrictions, some conservative-nationalist MPs perceived the new draft as already too watered-down. This resulted in a majority for the law's rejection in its third reading in May 2016 (Standish 2016; see also Lelik 2016).

4.2 LOCAL RESPONSES

The NGO sector in Kyrgyzstan played a major role in lobbying for the rejection of the law (Bir Duino 2016; Rittmann 2016). Beyond NGOs, trade unions, business associations and political parties also spent two years lobbying intensively to prevent the adoption of the law (USAID/ICNL 2017: 27). In coordinating their efforts, local organizations could draw on established NGO networks such as the Association of Civil Society Support Centers (ICNL 2014: 3). Initially, Kyrgyz NGOs adopted a confrontational stance, which culminated in the publication of an open letter to the president in 2014. In this letter, 43 NGOs warned that previous presidents were dismissed after they had attempted to restrict civil society space and that this could happen again. This appeal was perceived by the public and parliamentarians alike as blackmail and as solely reflecting the self-interest of the NGOs; in consequence, it seems to have boosted the critical stance against the NGO campaign among many parliamentarians (Kutueva/Mamytova 2014). After these negative repercussions, NGOs changed their strategy: they gathered signatures, presented petitions to the parliament, prepared legal appeals, lobbied MPs and sent inquiries to the Kyrgyz Ombudsman for Human Rights urging him to protect the rights of civil society (HRW 2013b; ICNL 2014: 3–4).

In addition, NGOs jointly – and in cooperation with the International Center for Not-for-Profit Law (ICNL) – developed advocacy strategies and national awareness campaigns in media and social networks, met with government officials to discuss possible repercussions of the law, and supported public and parliamentary hearings on it (HRW 2013b; see also ICNL 2014: 3–4). NGOs drew attention in particular to the law's potential to "hurt Kyrgyzstan's already obscured image to the outside world and [to] impede much-needed social programs to the cash-strapped country" (Standish 2016). Furthermore, NGOs and members of the political opposition reminded the government that all Kyrgyz state institutions, including the parliament, would actually qualify as foreign agents, since they were heavily dependent on funding from abroad (see Iskender 2013; Kutueva/Kudryavtsova 2013). NGOs also carried out media and social network campaigns designed to actively shape counter-narratives by informing the public about the beneficial role of NGOs in the social life of the country and at increasing awareness of their contributions to social development (USAID 2014a: 123). Activists also pointed to the example of Russia, where the original legislation had actually led to a shrinking of civil society space (IPHR 2015: 2).

4.3 INTERNATIONAL RESPONSES

Kyrgyz NGOs managed to draw attention to the imminent threat posed by the law and to build international support for their cause. They actively approached international organizations urging them to express concerns about the law (HRW 2013b) and “campaigned to raise awareness among businesses and professional associations about the negative consequences of these bills and ensure their support in the lobbying process” (USAID 2014a: 123). The restrictive law was subjected to the UN Human Rights Council’s Universal Periodic Review where various state and non-state actors criticized the draft law and called upon the Kyrgyz Republic to either revise the legislation to be compatible with international law or to drop it entirely (UNGA 2015: 8, 25). The UN Office of the High Commissioner for Human Rights (OHCHR) criticized the draft law for the vagueness of the term “political activities,” the negative connotation of the term “foreign agent” as well as the intensification of ministerial supervision of NGOs (OHCHR 2015). At a parliamentary hearing in 2014, which was convened to publicly discuss the draft law, the OHCHR, together with the UN Development Program (UNDP), the OSCE, and the EU Delegation in Kyrgyzstan, spoke out against the law claiming that it would infringe international human rights standards (HRW 2015). In addition, the OSCE Office for Democratic Institutions and Human Rights (ODIHR), together with the Venice Commission, prepared a legal analysis of the law concluding that it would contravene “relevant human rights standards” (Venice Commission/ODIHR 2013: 4). More specifically, these institutions highlighted that “the negative connotation of the term ‘foreign agent’ [...] would most probably encounter an atmosphere of mistrust, fear and hostility” and, as a consequence, found the draft law to “represent an interference with the exercise of the right to freedom of association and of freedom of expression without discrimination” (Venice Commission/ODIHR 2013: 10–11). Furthermore, in December 2014, the OSCE hosted a debate on the situation of human rights defenders in Kyrgyzstan which brought together state officials and representatives of more than 60 local NGOs (OSCE 2014).

On a similar note, in 2014, the EU criticized the open “attempts to restrict [NGO] access to foreign funding over the past few years and to delegitimise their work” (EEAS 2014). In 2015, in the context of its Human Rights Dialogue with Kyrgyzstan, the EU “underlined its concerns regarding the possible adoption of the draft ‘foreign agents’ law” (EEAS 2015). The US Mission to the OSCE also urged the Kyrgyz government “to oppose the draft law and continue engaging civil society in a transparent and meaningful way, without stigmatizing or restricting peaceful NGO activities” (US Mission to the OSCE 2015). Additionally, the US granted technical support to NGOs in Kyrgyzstan. Within the framework of the Enhanced Enabling Environment program, USAID in cooperation with the ICNL supported Kyrgyz NGOs in carrying out advocacy campaigns that aimed at preventing “draft laws limiting freedom of association and assembly as well as the draft that would label NGO’s receiving foreign funding as ‘foreign agents’” (USAID 2017).²⁵

25 According to ICNL (2014: 3), “ICNL and its local partner (the Association of Civil Society Support Centers) immediately mobilized the CSO community to develop a strategic plan against adoption of the draft law. ICNL prepared and distributed its analysis and, at an initial roundtable held in September, participants decided to push for public hearings on the draft law as soon as possible.”

4.4 FINDINGS

The successful resistance to the draft Foreign Agents Law was clearly driven by a coalition of Kyrgyz NGOs (see ICNL 2019; Standish 2016). The analysis suggests that the general strength of local CSOs in Kyrgyzstan, the establishment of a broad alliance of local organizations as well as the early shift from a confrontational strategy to an advocacy and awareness-raising campaign were key elements that help explain the success of the resistance. Furthermore, the changed composition of parliament as a result of the 2015 elections provided a window of opportunity. Still, the success of the campaign cannot be simply attributed to domestic dynamics. On the one hand, the local efforts were themselves directly supported by external actors (such as by ICNL, with support from USAID). On the other hand, international pressure and the fear on the part of the Kyrgyz authorities that their country would lose democratic credibility were arguably important conditions that strengthened the successful domestic campaign (Dodsworth/Cheeseman 2018: 10; Standish 2016). As a member of the ruling party said during the third and final parliamentary debate on the draft law:

Many international organisations expressed their concern. We get financial assistance from them in many fields, including healthcare, education and agriculture among others. We need this money (quoted in Lelik 2016).

In the end, the controversy over the Foreign Agents Law reveals profound divisions among Kyrgyzstan's political elite and society at large. As Catherine Putz explains, on the one hand, "there is deep-seated suspicion of outsiders funding organizations in the region for their own purposes"; but, on the other, "Kyrgyzstan's people have benefited greatly from NGOs, which don't just pursue sometimes controversial human rights issues (such as LGBT issues) but tackle broad public health issues and also fill gaps in government services" (Putz 2016b). The campaign against the Foreign Agents Law was able to capitalize on the latter type of perception. However, resentments against NGOs within the political elite remain strong and renewed attempts to introduce legal restrictions remain a possibility.²⁶ Up to now, however, fears among local NGOs that similar legislation might be reintroduced have not materialized (see ICNL 2019).

5. ZAMBIA

While Zambia has a functioning multi-party democracy with regular and free elections, observers have noted a trend towards shrinking civic space, along with an increasingly strained relationship between government and civil society. Since the end of the one-party system in 1991, NGOs operate largely without restrictions and are free to register under the 1958 Societies Act. Nonetheless, Zam-

²⁶ In April 2017, for instance, former President Atambayev declared: "We must not allow certain figures, who pose as human rights defenders, opposition members or NGOs [sic] representatives but in reality 'work off' money received from abroad, to impose alien values on people and seek to turn our children into mankurts [meaning people who have lost touch with their roots]. Frankly speaking, it is time to defend our country against such human rights activists" (quoted in IPHR/Legal Prosperity Foundation 2017: 6).

bian governments have generally tended to perceive “CSOs involved in service provision as partners,” but “those involved in advocacy and governance work to be unsettling and somewhat provocative” (Kaliba 2014: 7). After 2007, the Movement for Multiparty Democracy (MMD), which had governed Zambia since 1991, adopted an increasingly illiberal stance towards both the political opposition and critical voices within civil society (see Bertelsmann Stiftung 2018b: 5–6). In light of increasingly contested elections, the MMD presented a draft NGO law (in 2007) and, after temporarily withdrawing it, finally adopted the NGO Act (in 2009), arguably in an attempt to “hold onto the reins of power” by “limiting civic space” (Kaliba 2014: 8) – but the MMD government refrained from implementing the new regulations. While in opposition, the Patriotic Front (PF) had promised that it would repeal the Act once in power. However, when it actually won the 2011 elections it did not follow up on this promise. In July 2013, the PF government finally called upon NGOs to register under the NGO Act (Kalibra 2014: 9; see also Freedom House 2017). As a consequence, “the relationship between key civil society groups and the [PF] government has become increasingly strained” (Bertelsmann Stiftung 2018b: 34; see also USAID 2013: 160–161).

In terms of the overall political situation, Freedom House has ranked Zambia as “partly free” since the mid-1990s (in the early 1990s, the country was even briefly considered “free”).²⁷ According to V-Dem, Zambia has moved back and forth between an “electoral democracy” and an “electoral autocracy,” with a relatively long democratic phase between 2006 and 2014, followed by years of authoritarian rule since 2015. This is also reflected in V-Dem’s “Liberal Democracy Index”: Between the early 1990s and 2015, Zambia continuously received the best scores among the four countries studied in this report, but in recent years the country has dropped below the levels of Kenya and Kyrgyzstan.²⁸ In the Bertelsmann Transformation Index (2006–2018), Zambia has been considered a “defective democracy” throughout.²⁹

5.1 OVERVIEW OF THE PLANNED LEGAL RESTRICTIONS

The first draft of the disputed NGO law was tabled in 2007 by the MMD. Guided by the official aim of making NGOs “more transparent”, the provisions of the draft law included “the registration and coordination of NGOs (including international NGOs with offices in Zambia),” the establishment of a committee led and dominated by the government which would “discuss a code of conduct for NGOs,” and the requirement to harmonize NGO activities “for the development of Zambia” (OBS 2008). After widespread criticism from domestic civil society groups, the political opposition, and international NGOs working in Zambia, the government postponed the presentation of the bill to parliament (OBS 2008). Two years later, however, the law was introduced again and, in August 2009, it was enacted by parliament as NGO Act No. 16 (Kaliba 2014: 8). This time, approval occurred without much protest since it took many civil society actors by surprise (Meyns 2014: 62). The 2009 NGO Act, in particular,

27 See <http://www.freedomhouse.org>.

28 See <https://www.v-dem.net/en>.

29 See <https://www.bti-project.org>.

requires NGOs to register with, have their area of work approved by, and annually report to an NGO Registration Board. It further defines conditions under which the registration of NGOs “may be denied, suspended or canceled,” requires the self-regulation and coordination of NGOs by an official Congress of NGOs, and defines “penalties for infringing on requirements of the Act” (Siwale 2013: 4, 10).³⁰

While the Zambian government highlighted “the need for coordination, accountability and transparency of the NGO sector” (Siwale 2013: 9), NGOs saw the act as “a reaction to checks and balances” imposed by NGOs on the government (Siwale 2013: 9) and as “an instrument to close up the space for participation” (Diakonia 2013: 27). The international civil society alliance CIVICUS, for instance, criticized the 2009 NGO Act as “creating a highly restrictive regulatory regime” based on problematic registration procedures, excessive governmental control, and forced self-regulation of NGOs (Tiwana 2009: 1). Zambian NGOs also emphasized that, while the law was mainly directed at critical human rights groups and watchdog NGOs, its provision would also adversely affect small and locally based civil society groups without the necessary capacity to meet the provisions of the law (IRIN 2009a).

Since the government initially refrained from implementing the NGO Act signed into law in 2009, NGOs decided to engage with the government rather than confronting it outright (Meyns 2014: 62–63). During the 2011 presidential election, the controversial law became a major topic and ultimately contributed to the change in government: Many observers assert that the PF’s presidential candidate, who strongly opposed the NGO Act, won the election only due to widespread support by civil society organizations (Diakonia 2013: 27). In 2013, however, the PF government started to implement the law and required all NGOs to (re-)register or “face a ban” (Freedom House 2017; see also USAID 2013: 160–161).³¹ In response, a “significant number” of NGOs declined to register under the NGO Act, “issuing statements and petitions which, among other issues, remind[ed] the PF government to deliver on its campaign and manifesto promises” (Kaliba 2014: 9). Many NGOs also refused to be registered, claiming that they were already registered with other entities and that the law was unconstitutional (Amnesty International 2015: 410). In response to these protests, the government prolonged the deadline several times, but generally insisted that the law could only be reviewed once it was fully operational and, as a result, all NGOs registered (see Meyns 2014: 64; Zambian Watchdog 2014a).

The conflict was aggravated in 2014 when a letter by the Zambian government was leaked that was sent “to almost all diplomatic missions in Zambia asking them to stop supporting NGOs not registered” (Zambian Watchdog 2014b; see also USAID 2014b: 187). At the same time, all major NGOs

30 Registration, for instance, could be denied or activities could be suspended if an NGO’s work were deemed to be not in the “public interest” or on other bureaucratic or undefined grounds (Tiwana 2009: 2). In general, the Registration Board was also provided with broad powers to monitor NGOs: to approve their geographic and thematic area of work, advise on activities and align them with government plans (USAID 2014b: 186–187).

31 In the end, both Zambian governments – the MMD and the PF administrations – justified the NGO Law in terms of enhancing transparency and (donor) accountability, and they also defended the law by drawing attention to perceived political meddling of NGOs. For instance, in 2009, the MMD information minister emphasized that “NGOs should not become like the opposition”: “They should not be used as an opposition point, even for foreign countries.” (quoted in IRIN 2009a). And, in 2013, Vice President Guy Scott argued that “We do not want to see people pursuing political agendas under the guise of the NGOs” (quoted in National Assembly of Zambia 2013).

that had refused to register under the NGO Act “were notified by the government that they would be deregistered and must cease operations after a thirty-day period unless they gave reasonable cause as to why the deregistration should not take place” (USAID 2014b: 187). Yet, after eight renowned Zambian NGOs filed a lawsuit against the law in 2014, which they deemed to be unconstitutional, the government agreed to, once again, enter into dialogue with the NGOs with a view to reviewing the NGO Act. When the government promised to suspend all punitive measures related to the registration process, the NGOs withdrew the lawsuit (Lusaka Times 2014c; USAID 2014b: 187–188). The dialogue between the government and CSO representatives, which was facilitated and supported by the German Agency for International Cooperation (GIZ) (see below), later led to the launch of a national NGO policy set to repeal the 2009 law (Lusaka Times 2018). At the time of writing, the NGO Act still remains in force, but the controversy has subsided significantly, with the negotiations between the government and the NGOs apparently ongoing (see CIVICUS 2017; CIVICUS and ZCSD 2017; Freedom House 2018).

5.2 LOCAL RESPONSES

Ever since the first draft version of the NGO Act became public, Zambian NGOs have lobbied intensively to fight against its adoption. In 2007, CSOs and opposition parties successfully mobilized to prevent the presentation of the draft law to the parliament (IRIN 2009b; OBS 2008). When the law was reintroduced without consultation in 2009, it met with considerable resistance from national and international NGOs. Several organizations submitted recommendations to the government in order to mitigate restrictive provisions and attempted to engage in dialog with the government and the parliament (Meyns 2014: 63–64). Since the law was not implemented by the MMD government, NGOs focused their advocacy activities on the 2011 presidential elections, especially on supporting the PF candidate, who had promised to abolish the restrictive act.

When the new PF government started to implement the NGO Act in 2013, NGOs took a relatively confrontational stance “to fight [...] an unjust law to the bitter end” (Lusaka Times 2014a). NGOs explicitly reminded the government that it was civil society that voted the president into office and could thus also end his presidency (Phiri 2014). NGOs also lobbied European countries to gain support – a step sharply criticized by government officials (Lusaka Times 2013). When, in response, the government became increasingly hostile and confrontational, NGOs changed tactics, reduced public criticism of the government, and instead sought to enter into dialog with the administration (USAID 2013: 164). They allied in order to coordinate national advocacy campaigns, as well as to lobby regional and national parliamentarians and highlight the negative implications of the law (USAID 2013: 64; NGOCC 2015: 15). In these campaigns, Zambian NGOs focused on emphasizing the importance of their work, reminding the government and the general public of the need and the value of a critical and active civil society. National NGO networks lobbied to raise awareness of the negative effects of the law among their local partners in order to attract nationwide support (NGOCC 2015: 18). In addition, as already mentioned, despite threats of deregistration by the government (CIVICUS 2013), many NGOs chose not to register under the 2009 NGO Act.

The most visible resistance to the law was, however, the court appeal that challenged the constitutionality of the NGO law on the basis that it would entail “gross violations” of the freedom of association (Phiri 2014). Particularly the requirement of re-registration, the disclosure of funding sources and the monitoring possibilities of the government were questioned (Mwitwa 2014). After the government suspended the law, the responsible NGOs decided to withdraw the lawsuit to demonstrate their willingness to cooperate (Lusaka Times 2014c).

It should be noted that, while the protest movement gained broad media coverage, not all national NGOs were united against the law. Many Zambian NGOs were not generally opposed to a law aimed at regulating their activities and a few NGOs actually decided to register in accordance with the new law, which led to heightened tensions within civil society itself (Meyns 2014: 60). Moreover and partly as a consequence, “efforts were at times ad hoc, and organizations sometimes held back from lobbying for fear of reprisals from politicians in the ruling PF or the threat of deregistration under the NGO Act” (USAID 2014b: 191).

5.3 INTERNATIONAL RESPONSES

Many international NGOs publicly criticized the PF’s decision to implement the law. Freedom House, for instance, urged “the government of Zambia to postpone enforcement of its draconian NGO Act” and called it a “violation of the country’s constitutionally-guaranteed freedom of association” (Freedom House 2014). A coalition of 112 international and national NGOs published an open letter to the president expressing their concern about the “government’s decision to operationalize the controversial 2009 Non-Governmental Organisations Act,” which would “be a severe setback to the independence of civil society in Zambia while being regressive for the country’s democratic trajectory.” The open letter ended with an appeal to the president “to engage with NGOs and civil society groups in drawing up a new NGO law that conforms with international standards and is a fitting tribute to Zambia’s commitment to democratic values” (CIVICUS 2013).

As far as foreign governments and international organizations are concerned, no significant diplomatic reactions to the adoption and later implementation of the NGO Act could be identified. The most notable international contribution came from Germany and, more specifically, from the German Agency for International Cooperation (GIZ), which assumed an important mediating role in the conflict between the Zambian NGO sector and the government. For instance, it supported the preparation of a study on the constitutionality of the law and its compatibility with Zambian legislation (USAID 2015: 233). GIZ also coordinated a series of meetings between the government and civil society representatives, in this way facilitating the resumption of dialog that was meant to lead to a revision of the law. Through its Civil Society Participation Programme (CSPP) in Zambia, GIZ supported the review process that took place between civil society and the responsible ministry, concentrating especially on improvement of state-civil society relations (GIZ 2015: 4–8). GIZ also assisted in the drafting of a Law Compatibility Analysis Report that was accepted by both sides (USAID 2015: 233).

5.4 FINDINGS

Even if the contentious NGO Act is still in place, the campaign against the attempt at increasing legal restrictions on CSOs in Zambia can be considered successful in the sense that the government was forced to suspend the enforcement of the law, convene nationwide consultations to review its NGO policy and, to date, has refrained from reintroducing punitive measures (Nyirenda 2014; see also CIVICUS 2017; Freedom House 2018).

Domestic resistance was crucial for this success. The NGOs that advocated for the revocation of the law managed to mobilize a broad range of different civil society actors. While the government's hostile rhetoric and actual threats of deregistration particularly threatened national advocacy NGOs, NGOs engaged in service delivery and a broader range of CSOs also supported the opposition to the law (Lusaka Times 2014a, 2014b, Meyns 2014: 64–65). Furthermore, this civil society alliance proved to be adaptive in their strategy of resistance: When the confrontational strategy became increasingly problematic, NGOs turned to advocacy and lobbying of parliamentarians and, finally, to a judicial resistance strategy.

In terms of the framing of the resistance, the campaign emphasized the positive value of the NGO work and the corresponding negative implications of the new NGO law. In the case of Zambia, the very specific fact that the NGO law was implemented by a party that had originally opposed it also facilitated the resistance. Generally, this created strong momentum against the NGO law and bolstered the NGOs' credibility and determination (see Mwitwa 2013; Meyns 2014: 62–63). On the part of the government, changes in personnel also helped to shift from conflict to dialogue: Minister of Justice Wynter Kabimba (2012–2014) was known to be critical of NGOs, as he tried to raise his profile as an aspirant to office in the next presidential elections by enforcing his agenda. After he was replaced by a new minister in August 2014, the government became more receptive to suggestions from CSOs (Meyns 2014: 64). In terms of structural preconditions, the fact that a judicial appeal by NGOs brought the government back to the negotiating table confirms the relevance of the political context, in this case a fairly democratic regime with a relatively independent judiciary (Bertelsmann Stiftung 2018b: 11–12).

While several international civil society organizations and alliances supported the domestic campaign against the NGO law, we could not find any significant reactions by foreign governments or international organizations. At a very practical level, however, the German GIZ apparently played an important role in enabling the shift from confrontation to dialogue. GIZ facilitated the dialogue between the government and CSO representatives by acting as an independent third-party mediator, while also assisting the review process in very practical terms, e.g., by supporting the preparation of the Law Compatibility Analysis Report.

6. CONCLUSION

When looking at the four cases studied in this report from a comparative perspective, a set of common features can be identified. These concern the importance, the overall form and the strategies of domestic resistance, the role of external actors, the characteristics of successful counter-narratives, and important context conditions. In this conclusion, we briefly discuss these comparative findings before we turn to the limits of our study as well as to the potential downside of successful campaigns against legal CSO restrictions.

The importance of domestic campaigns: Across the four very different cases, the capacity on the part of local CSOs to organize broad campaigns of domestic resistance in a short period of time proved crucial.³² In two cases, these domestic campaigns were able to build on preexisting NGO networks (Kenya, Kyrgyzstan); in the others, they were able to rapidly build such alliances (Azerbaijan, Zambia). Whether the emergence of a strong domestic opposition movement is, indeed, a necessary condition for successful resistance against restrictive NGO laws will have to be assessed in future research.

Form of domestic resistance: Domestic resistance, in these four cases of campaigns against NGO laws, did not take the form of mass protests or some generalized type of public outcry, but was rather driven by organized civil society groups, coordinated and led by those very NGOs that were to be affected. The latter, however, succeeded in building broad and relatively united alliances of CSOs that included not only the specific sub set of human rights and advocacy organizations but also the usually much bigger group of NGOs engaged in social service delivery and, in part, also of other non-governmental actors (such as trade unions, business associations and/or private media) (see also ICNL 2010: 11).

Strategies: In terms of strategy, some attempts at confrontational or contentious activities notwithstanding, the formula for success in the cases at hand largely consisted in combining a general advocacy and awareness-raising campaign with targeted lobbying efforts (in particular, with members of parliament but also with government officials). In the end, just as “NGOs require the partnership of government and the legislature if a progressive law is to be enacted” (ICNL 2010: 11), the same logic also seems to apply to the repeal, withdrawal or revision of restrictive laws. This also implies the need for sound legal analyses and the development of technically well-prepared legal positions and proposals (see also ICNL 2010: 14).

The role of external actors: In contrast to the prominent role of the domestic campaigns in all the cases studied in this report, external actors played a much more limited role. Some kind of international support of the domestic resistance by external actors could be observed in all four cases, but its type and extent varied significantly. In the African cases, observable international pressure was

³² In its brief assessment of “lessons learned from progressive NGO legal initiatives,” ICNL similarly concludes that “NGO representatives and government officials must assume leadership of the drafting initiative, thus ensuring local ownership,” while “members of the international community should never supplant local initiative” (ICNL 2010: 15).

absent but external actors publicly supported the arguments put forward by the domestic resistance (Kenya) or helped mediate between the NGOs and the government (Zambia). In the Central Asian cases, our study identified instances of international criticism, including some degree of international pressure. Of particular relevance were regional organizations such as the Council of Europe (Azerbaijan) and the OSCE (Kyrgyzstan), but foreign governments such as the US also voiced concerns. The most important arguments made by these external actors concerned the democratic credibility and the international status of the countries involved, such as in terms of their membership in a (regional) community of states which implies normative obligations. In addition, most clearly in the case of Kyrgyzstan, external actors (ICNL/USAID) directly supported the domestic resistance.³³

Counter-narratives: In terms of the counter-narratives put forward by the (mostly domestic) resistance, the desk studies suggest that arguments related to tangible negative consequences of the (planned) legal restrictions were most successful. This is very clear in the case of Kenya, where emphasis was put on potentially massive negative socioeconomic consequences, but similar claims were also important in Kyrgyzstan. In Azerbaijan, the negative consequences rather concerned the international impact (the country's integration with "the West"). The case of Zambia is peculiar in the sense that the campaign there focused on the issue of a broken promise and, in the end, on the contested constitutionality of the respective NGO Law. What is, however, apparent across all cases is that general references to universal human rights standards – which are strongly present in the global discourse on shrinking civic spaces (Poppe/Wolff 2017) – were relatively absent from the domestic resistance movements we studied. If at all, they were mostly articulated by international NGOs and civil society alliances.

Context conditions: Finally, the comparison of the four cases studied in this report also suggests that successful resistance was dependent on certain enabling factors. In none of the four cases did domestic resistance have to confront a closed autocratic regime, but could make use of at least a certain degree of civic space and political access. This particularly applies to three of the four cases (Kenya, Kyrgyzstan, and Zambia), in which relatively open political systems provided space and access to the domestic campaigns, enabling the lobbying of members of parliament and/or judicial appeals.³⁴ In the case of Azerbaijan, the study suggests that higher degrees of regime closure and CSO repression were at least partially compensated by a relatively facilitatory international environment.

33 The above-mentioned ICNL study similarly concludes that "members of the international community [...] can [...] play an important supporting role. Carefully designed diplomatic intervention, providing convening services, facilitating timely provision of technical assistance – all these contributions to the participatory process are uniquely within the capacity of various elements of the international community, and they are often decisive in the effort to achieve a positive resolution" (ICNL 2010: 15).

34 As mentioned above, Freedom House ranks the three countries as "partially free" and Azerbaijan as "not free." While, in the Freedom House ranking, the difference between Azerbaijan and Kyrgyzstan is relatively small, it is more pronounced in V-Dem's "electoral democracy" and "civil liberties" indices. Freedom House's specific score for associational and organizational rights as well as V-Dem's indicator "CSO repression" further confirm the different levels of political openness in Kenya, Kyrgyzstan and Zambia, on the one hand, and Azerbaijan, on the other. See <http://www.freedomhouse.org> and <http://www.v-dem.net>.

Here, the role of international organizations and of international consequences was particularly important in giving weight to the domestic resistance.³⁵

In sum, comparison of the four cases studied in this report reveals important common features. However, the report takes only a first step towards furthering knowledge of the factors and dynamics that characterize successful resistance against legal CSO restrictions. Given that the findings reported here are based on desk studies of four individual cases selected precisely because of the success of resistance, these results will have to be tested in more in-depth studies as well as for a broader set of cases (including “negative” cases in which resistance failed). But there is an additional reason why the conditions for successful resistance identified in this report should be considered with caution: A successful campaign that actually prevents the adoption of a specific set of legal restrictions does not necessarily imply broader success in terms of improving civic freedoms and space. On the contrary, governments that fail to restrict unwelcome civil society activity legally might very well turn to extralegal measures. Looking once again at our cases, we have to end this report on a rather pessimistic note:

In the case of Kenya, for example, where the unity and solidarity of diverse NGOs successfully fended off problematic amendments to an otherwise broadly accepted law in 2013, the situation remains very difficult. As long as the PBO Act is not formally enacted, NGOs are subjected to the old legal framework and frequently attacked by and beyond legal measures. For example, the government canceled the registration and froze bank accounts of 1,497 NGOs between December 2014 and October 2015. Although the constitutional court, which was appealed to by some of the affected organizations, declared these actions unconstitutional, the governments has not ceased them (Brot für die Welt 2018: 31). Kenya, therefore, can reasonably be considered a case in which the frustrated attempts of a government to implement legal restrictions against NGO activities has provoked a shift towards stepping up extralegal measures.

In Kyrgyzstan, similarly, successful resistance should not be read as a sign of a positive overall trend. In the light of increasing authoritarian tendencies that are reflected, for instance, in the persecution of members of the political opposition (such as the 2017 presidential candidate Tekebayev), of human rights defenders and of independent journalists, as well as in restrictions on the right to association and assembly, the possibility that the government might reintroduce the Foreign Agents Law or a similar piece of legislation can hardly be disregarded (see Bir Duino 2017: 6). And as already discussed, from today’s perspective Azerbaijan’s civil society sector can only be considered vibrant in reference to the large exile community. While learning from successful instances of prevention or mitigation of legal civic space restrictions is thus one important step in designing promising responses to shrinking civic spaces, we need to keep in mind the bigger picture – which remains relatively grim in many countries around the world. Still, in the end, this grim situation is precisely the reason why it is so important to study and better understand successful resistance.

35 Dodsworth and Cheeseman (2018: 12) also identify the nature of the prevailing political regime as a relevant context condition. In their specific analysis of parliaments and parliamentarians, they emphasize the role of the electoral system and argue that parliamentarians’ willingness to defend civic space as well as the type of arguments that convince them depend on how members of parliament are elected.

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JANA BALDUS, NORA BERGER-KERN,
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AND JONAS WOLFF //

**PREVENTING CIVIC SPACE
RESTRICTIONS. AN EXPLORATORY
STUDY OF SUCCESSFUL RESISTANCE
AGAINST NGO LAWS**

In many countries around the world, civil society organizations are facing increasing restrictions that constrain their autonomy, capacity and/or freedom of action. While the general phenomenon of shrinking civic space and the adoption of legal restrictions in particular have become more widespread since the early 2000s, there are also cases in which governmental attempts to adopt restrictive NGO laws have been frustrated, aborted or, at least, significantly mitigated as a consequence of domestic and/or international resistance. This PRIF Report takes a look at four such cases (Azerbaijan, Kenya, Kyrgyzstan and Zambia) and identifies conditions and dynamics that help understand successful resistance against legal civic space restrictions.

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